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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ISSAC GRIGGS,

Defendant and Appellant.

B203757

(Los Angeles County
Super. Ct. No. BA104956)

APPEAL from an order of the Superior Court of Los Angeles County, Lance A. Ito, Judge. Affirmed.

Vanessa Place, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

In 1996, a jury found appellant, Issac Griggs (Griggs), guilty of two counts of forcible rape (Pen. Code, § 261, subd. (a)(2)),¹ during one of which he used a deadly weapon or firearm (§ 12022.3) and during one of which he inflicted great bodily injury (§ 12022.8), four counts of forcible oral copulation (§ 288a, subd. (c)), during three of which he inflicted great bodily injury and one of which he used a deadly weapon or firearm (§§ 12022.8 & 12022.3), second degree robbery (§ 211) and attempted sodomy (§§ 664/286, subd. (c)), during which he used a deadly weapon or firearm (§ 12022.3). On July 3, 1996, the trial court sentenced Griggs to 119 years in state prison. The term was modified on appeal to 115 years in prison.

Acting in propria persona, in 2007 Griggs made in the superior court a motion for resentencing based on the United States Supreme Court's decisions in *Cunningham v. California* (2007) 549 U.S. 270 (*Cunningham*), *Blakely v. Washington* (2004) 542 U.S. 296 (*Blakely*), and *Apprendi v. New Jersey* (2000) 530 U.S. 466 (*Apprendi*). On August 16, 2007, the trial court denied the motion.

PROCEDURAL HISTORY

According to the abstract of judgment, dated July 3, 1996, the trial court sentenced Griggs to a total term of 119 years in prison. He was awarded presentence custody credit for 586 days actually served and 88 days of good time/work time, for a total of 674 days. On appeal, Griggs's sentence was modified to 115 years in prison.

¹ All further statutory references are to the Penal Code unless otherwise indicated.

On August 16, 2007, the trial court considered Griggs's in propria persona application for modification of his sentence in view of the United States Supreme Court's decisions in *Cunningham, supra*, 549 U.S. 270, *Blakely, supra*, 542 U.S. 296 and *Apprendi, supra*, 530 U.S. 466. Griggs argued the cases were retroactive and, accordingly, the trial court erred when it imposed the upper term on several of the counts. The trial court denied the application and Griggs appealed from the trial court's order (§ 1237, subd. (b)).

This court appointed counsel to represent Griggs on appeal on January 31, 2008.

CONTENTIONS

After examining the record, counsel for Griggs filed an opening brief which raised no issues and requested this court to conduct an independent review of the record. By notice filed April 28, 2008, this court advised Griggs to submit within 30 days any contentions, grounds of appeal, or arguments he wished this court to consider. After numerous extensions, Griggs, in a supplemental brief filed in propria persona, argued the trial court had violated the mandates of *Cunningham*, *Blakely* and *Apprendi* by sentencing him to the upper term on several counts. This court deferred consideration of the issue pending the California Supreme Court's decision in *In re Gomez* (2009) 45 Cal.4th 650 (*Gomez*). It then directed the parties to address the application of the court's decision in *Gomez* to Griggs's case.

DISCUSSION

In *Gomez*, the California Supreme Court determined that *Cunningham* applies on collateral review of a judgment if that judgment became final after *Blakely* was decided,

but before the decision in *Cunningham*. (*Gomez, supra*, 45 Cal.4th at p. 653.) The *Gomez* court noted: “The *Cunningham* decision . . . did not extend or modify the rule established in *Blakely*, but merely applied it to the California sentencing scheme.” (*Gomez, supra*, at p. 657.)

As both parties conclude, because sentence was imposed in the present case before the court’s decisions in *Blakely*, *Apprendi* or *Cunningham*, those cases did not apply and the trial court could properly impose the upper term on one or more counts.

APPELLATE REVIEW

We have examined the entire record and are satisfied Griggs’s counsel has complied fully with counsel’s responsibilities. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-284; *People v. Wende* (1979) 25 Cal.3d 436, 443.)

DISPOSITION

The trial court’s order denying modification of the sentence is affirmed.

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CROSKEY, J.

We concur:

KLEIN, P. J.

ALDRICH, J.